

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

**MEMORANDUM &
ORDER**
15-CR-112

-against-

WILLIAM GROTH,

Defendant.

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Jack B. Weinstein U.S. Senior District Judge

This memorandum is provided to assist the parties at oral argument, scheduled for Friday, June 26, 2015, on defendant's motion to dismiss the superseding indictment. Relied on are 21 U.S.C. §§ 813, 802 (32)(A); the United States Supreme Court's recent ruling in *McFadden v. United States*, 14-378, 2015 WL 2473377 (U.S. June 18, 2015); the Court of Appeals for the Second Circuit's rulings in *United States v. Roberts*, 363 F.3d 118 (2d Cir. 2004) and *United States v. Ansaldi*, 372 F.3d 118 (2d Cir. 2004); and the Supreme Court's ruling in *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579 (1993).

The court is prepared to take judicial notice of the fact that designer drug manufacturers and distributors attempt to flout the law by altering the chemical composition of illegal drugs to avoid prosecution, but to provide the same effect to the user. If any party objects to judicial notice, expert testimony on this subject will be permitted.

The court plans to charge the jury that an objective and subjective element to the crime must be established. The government must prove criminality as follows:

1. 5F-AMB is chemically “substantially similar” to ADB-PINACA, according to expert testimony; and
2. The defendant knew or believed that 5F-AMB was intended, when imbibed by a human, to have “a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system” of ADB-PINACA; or
3. The defendant represented or intended that 5F-AMB, when imbibed by a human, would have “a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system” of ADB-PINACA.

SO ORDERED.

/s/ Jack B. Weinstein
Jack B. Weinstein
Senior United States District Judge

Date: June 25, 2015
Brooklyn, New York